IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1188 OF 2005

Ayeshabi Mohammed Taki .. Petitioner

V/s

1. The State of Maharashtra
through the Department of Home
Preventive Detention, Mumbai

2. The Commissioner of Police,
Brihanmumbai, Mumbai

3. The Senior Inspector of Police
Mahim Police Station, Mumbai ... Respondents

Smt.Varsha Palav for the Petitioners
Mr.D.S.Mhaispurkar,A.P.P. for the Respondents

CORAM: S.B.MHASE &
S.R.SATHE,JJ.
DATED: 24th August, 2005

ORAL JUDGMENT :- (Per S.R.Sathe,J.)

1. By this petition under Article 226 of Constitution of India, the Petitioner, wife of Detenu, Mohjammed Taki Ahmed Ali Chunara @ Mohammed Islam Mohammed Ali shaikh, has taken an exception to the order of the detention passed by Respondent no.2 on 15-12-2004 in the exercise of powers conferred by Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for the sake of convenience hereinafter referred to as "the said Act".

2. The impugned order of detention is based on one criminal case bearing CR No.185/4 registered against the Detenu for the offences punishable under Section 353, 186, 506 of IPC read with 37(1),(a), 142 of Bombay Police Act and two in-camera statements. After considering the material placed before him, the Respondent no.2 came to the conclusion that Detenu was indulging in activities prejudicial to the public order and that he is a dangerous person. He, therefore, issued the above mentioned order and it was served on the Detenu on 18-12-2004. The grounds of detention and other documents along with other papers with Hindi translation of the said papers were also served on the Detenu at the same time. The State Government was pleased to issue the order communicating the approval to order of the detention on 20-12-2004.

3. On 29-12-2004 the Detenu made a representation before Respondent nos.1 and 2 and prayed for revocation of the detention order. According to the Petitioner there was inordinate delay in deciding and communicating the decision as regards the Detenu's representation. The Petitioner by her representation dated 26-3-2005 to the Respondent no.1 pointed out the said fact and requested for release of the Detenu. She also filed the present Criminal Writ Petition and alleged that delay in consideration of representation and communication of rejection order have vitiated the provisions of Article 22(5) of Constitution of India and Section 8 of the said Act. The Petitioner, therefore prayed that the detention order be quashed and Detenu be released.

4. The Respondent no.2, Commissioner of Police,Mumbai filed his affidavit dated 27-6-2005 and opposed the petition. Similarly, concerned Police Sub Inspector, Vivek Bhosale, also filed his affidavit and contended that there was no delay on his part in taking steps in the matter. The Jailor, Satish M. Sonawane has also filed his affidavit and pointed out that rejection order was communicated to the Detenu immediately after the same was received i.e. on 18-1-2005. The Under Secretary, Home Department, S.M.Mhatre has also filed his affidavit and pointed out that there was no delay in considering the representation and the same was also communicated immediately. Thus all the Respondents opposed the application.

5. Though in the petition the impugned order is challenged on several grounds Smt.Varsha Palav, learned Advocate for the Petitioner has pressed into service only one ground mentioned at clause 14 of the petition viz. "unduly long delay in the disposal of the representation of the Detenu and communication of the order of rejecting the said representation".

6. The learned Advocate for the Petitioner by relying on the provisions of Article 22(5) of Constitution of India and Section 8 of the said Act vehemently argued before us that it was necessary for the Respondents to consider the representation expeditiously and communicate the rejection order immediately. However, that obligation has not been satisfactorily discharged by the concerned authorities and as such the order of detention is vitiated. As against this Shri Mhaispurkar, learned A.P.P. submitted that there was no delay in considering the representation and reply of rejection was also sent without any delay and as such petition be dismissed.

7. It is needless to say that there are various authoritative pronouncements in which the Apex Court has held that Article 22 (5) of Constitution of India mandates that representation made by a Detenu against the order of detention should be considered and disposed of at the earliest. The Apex Court has also observed that the court can certainly consider whether the delay was

occasioned due to permissible reasons or unavoidable causes. The Apex Court has also held that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner.

8. Bearing in mind the above position, we have to scan the material on record and find out whether there was any delay on the part of the Respondents in considering the representation and thereafter communicating the rejection of the same. From the perusal of affidavit of S.M.Mhatre, Under Secretary, Home Department, it is very clear that representation dated 29-12-2004 signed by Detenu on 31-12-2004 was received in Home Department on 1-1-2005. Thereafter parawise remarks were called from the Commissioner of Police, Mumbai vide letter dated 3-1-2005. The same were received by Home Department on 11-1-2005. Thereafter necessary note was prepared on 12-1-2005 and ultimately the representation was rejected by the concerned authority on 15-1-2005. The rejection reply was received by Nasik Central Prison on 18-1-2005 and the same was communicated to the Detenu on the same day i.e. 18-1-2005.

9. The Jailor has also filed affidavit stating therein that rejection reply was served on Detenu on 18-1-2005 and his signature was obtained. We have perused the concerned document which bears the signature of the detenu for having received the rejection reply

accordingly. Thus after perusing the affidavit and necessary documents we are satisfied about the explanation given by the concerned officials. From the perusal of their affidavits it is very clear that they acted promptly and there was no lapse or any indifferent attitude on the part of the Respondents while dealing with the representation made by the Detenu.

10. Hence, we have no hesitation to hold that there was no delay which can said to be fatal or adversely affecting the interest of Detenu.

11. In this view of the matter, there is no substance in this petition. Hence the petition is dismissed.

. Rule is discharged.

(S.R.SATHE,J.) (S.B.MHASE,J.)